

## CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Genevieve Lamont	Team: Squad #8	CCRB Case #: 201903349	<input checked="" type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Sunday, 04/07/2019 11:31 PM	Location of Incident: § 87(2)(b)	Precinct: 30	18 Mo. SOL 10/7/2020	EO SOL 5/24/2021	
Date/Time CV Reported Mon, 04/08/2019 2:13 AM	CV Reported At: IAB	How CV Reported: Phone	Date/Time Received at CCRB Thu, 04/18/2019 11:07 AM		

Complainant/Victim	Type	Home Address
§ 87(2)(b)	§ 87(2)(b)	§ 87(2)(b)

Witness(es)	Home Address
§ 87(2)(b)	§ 87(2)(b)

Subject Officer(s)	Shield	TaxID	Command
1. SGT Corey Martinez	02146	935257	ESS 02
2. DTS Jean Hunt	5391	935035	ESS 02
3. Officers			
4. POM Alvin Pizarro	13870	943687	C R C

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POM Andrew Chu	26577	957459	030 PCT
2. POM Robert Davila	15863	963945	030 PCT
3. SGT Robin Taveras	01073	939835	030 PCT
4. POM Avery Jennings	28198	944092	030 PCT
5. POM Alvin Joseph	03186	965764	030 PCT
6. POF Johanna Rosariohurtado	02500	965851	030 PCT
7. POF Yudelka Espinal	23429	962387	030 PCT
8. POF Karyn Giordano	21427	962435	030 PCT

Officer(s)	Allegation	Investigator Recommendation
A.POM Alvin Pizarro	Abuse: Police Officer Alvin Pizarro entered § 87(2)(b) in Manhattan.	§ 87(2)(b)
B.POM Alvin Pizarro	Discourtesy: Police Officer Alvin Pizarro spoke discourteously to § 87(2)(b)	§ 87(2)(b)
C.POM Alvin Pizarro	Abuse: Police Officer Alvin Pizarro threatened § 87(2)(b) with the use of force.	§ 87(2)(b)
D.DTS Jean Hunt	Force: Detective Jean Hunt used physical force against § 87(2)(b)	§ 87(2)(b)
E.SGT Corey Martinez	Force: Sergeant Corey Martinez used physical force against § 87(2)(b)	§ 87(2)(b)
F. Officers	Abuse: Officers took recordings of § 87(2)(b)	§ 87(2)(b)

### Case Summary

On April 8, 2019, Sgt. Ali Javed filed the following complaint with the Internal Affairs Bureau on behalf of § 87(2)(b) generating original IAB log #2019-14458. The CCRB received the complaint on April 18, 2019.

On April 7, 2019, at approximately 11:31 p.m., § 87(2)(b) was visiting his girlfriend, § 87(2)(b) at her apartment located at § 87(2)(b) in Manhattan. While alone inside the apartment, he heard officers knocking on the door and ordering him to open it. PO Alvin Pizarro, assigned to the 30<sup>th</sup> Precinct during this incident, kicked in the cardboard surrounding the air conditioner in the kitchen window and shined a flashlight into the apartment (**Allegation A: Abuse of Authority; § 87(2)(g)**). PO Pizarro pointed his taser into the apartment and stated, “I’m going to tase this motherfucker” (**Allegations B and C: Discourtesy and Abuse of Authority; § 87(2)(g)**). § 87(2)(b) then opened the door, where he was grabbed by Det. Jean Hunt and Sgt. Corey Martinez from ESU and taken to the ground, resulting in a laceration to his head (**Allegations D and E: Force; § 87(2)(g)**). While § 87(2)(b) was on the ground, officers allegedly recorded him on their cellphones (**Allegation F: Abuse of Authority; § 87(2)(g)**). § 87(2)(b) was removed to § 87(2)(b) in Manhattan for treatment.

Body-worn camera (BWC) footage was obtained from PO Pizarro, Sgt. Robin Taveras, PO Andrew Chu, PO Robert Davila, PO Yudelka Espinal, PO Avery Jennings, PO Alvin Joseph, PO Johanna Rosariohurtado, and PO Karyn Giordano [BR01 through BR17, respectively].

### Findings and Recommendations

**Allegation (A) Abuse of Authority: Police Officer Alvin Pizarro entered § 87(2)(b) in Manhattan.**

**Allegation (B) Discourtesy: Police Officer Alvin Pizarro spoke discourteously to § 87(2)(b)**

**Allegation (C) Abuse of Authority: Police Officer Alvin Pizarro threatened § 87(2)(b) with the use of force.**

It is undisputed that PO Pizarro threatened to taser § 87(2)(b) and used discourteous language in his presence; however, he did not make the statement “I’m going to tase this motherfucker.”

§ 87(2)(b) testified that as officers were ordering him to open the door, he observed PO Pizarro kick the cardboard surrounding the air conditioner in the living room window and shine his flashlight in. He also observed three red dots shining on the wall, which he believed were from a taser. § 87(2)(b) also heard the kitchen window open and PO Pizarro say, “I’m going to tase this motherfucker.” He did not observe a taser but believed that the red dots indicated one was present. After ten minutes, the red dots disappeared. § 87(2)(b) then opened the front door, stating that he did not want it to be damaged [BR18].

The Event information for the incident showed that § 87(2)(b) reported in her 911 call that § 87(2)(b) beat her up and that she was bleeding [BR19]. When he arrived on scene, PO Pizarro met with § 87(2)(b) downstairs, who informed the officers that she had been assaulted and “choked out” by § 87(2)(b) who she said was still inside her apartment. PO Pizarro testified that after several minutes of attempting to get § 87(2)(b) to open the door, he determined to go up on the fire escape to get a visual into the apartment. Once on the fire escape, he opened the kitchen window and began to enter the apartment, when he observed § 87(2)(b) pacing back and forth in the hallway approximately 10 to 15 feet away. He did not kick any cardboard. PO

Pizarro also observed a set of knives by the kitchen window. He moved out of the window and removed his taser. He stated that he was concerned that § 87(2)(b) would try to assault him, and that he pointed his taser into the hallway. § 87(2)(b) did not react to the taser. At no point did he move closer to PO Pizarro and remained pacing in the hallway. He and PO Pizarro did not speak to each other. The Event did not mention § 87(2)(b) possessing any weapons and PO Pizarro did not testify to observing any [BR19]. PO Pizarro did not recall if he specifically told § 87(2)(b) that he would taser him but did tell him that someone would come into the apartment and take him. An ESU officer eventually told him to move away from the window, as they were about to enter [BR20].

PO Pizarro's BWC captured the officers with § 87(2)(b) after first arriving on scene. At 00:30 minutes, § 87(2)(b) informed the officers that the apartment is hers and consented to officers going to her apartment to check if § 87(2)(b) was still there [BR01]. § 87(2)(b) refused to provide a statement the investigation [BR21]. PO Pizarro's other BWC footage showed that, at 3:57 minutes, PO Pizarro communicated over the phone with PO Chu that § 87(2)(b) is in the kitchen near a "bunch of knives" and that he did not want to be "fucking stabbed" and if § 87(2)(b) "comes through, I'm gonna fucking tase him." His taser is pointed through the window. At 6:07 minutes, PO Pizarro tells § 87(2)(b) with his taser still pointed, that the officers are going to break down the door in two minutes and that he will tase him, and to open the door. It did not capture him breaking down the cardboard around the air conditioner or entering through the window [BR02]. After viewing the BWC footage, PO Pizarro acknowledged telling § 87(2)(b) that he would tase him, but reiterated that it was due to a safety concern [BR19].

People v Gonzalez, 39 N.Y. 2d 122 (1976) ruled that voluntary consent is an exception to the warrant requirement for entry [BR22].

People v McBride, 14 N.Y. 3d 440 (2010) ruled that police may proceed without a warrant to effectuate an arrest within a home if exigent circumstances exist to justify a warrantless entry. Exigent circumstances include the gravity or violent nature of the offense which the suspect is to be charged, a clear showing of probable cause to believe that the suspect committed the crime, and strong reason to believe that the suspect is in the premises being entered [BR23].

According to Patrol Guide Procedure 203-09, officers must interact with members of the public in a professional manner [BR24]. In DCT-DAO Case #2017-17276, it was ruled by the Honorable Paul M. Gamble, the Assistant Deputy Commissioner of Trials, that language which would ordinarily be inappropriate in dealing with civilians may be excused in the case of a violent confrontation [BR25].

According to patrol Guide Procedure 221-08, a conducted electrical weapon (CEW) should only be used against persons who are actively resisting, exhibiting active aggression, or to prevent individuals from physically injuring themselves or other person(s) present. Active resisting is defined as physically evasive movements to defeat an officer's attempt at control or verbally signaling an intention to avoid being taken into custody. Active aggression is a threat or overt act of assault, coupled with the present ability to carry out the threat or assault [BR24].

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

**Allegation (D) Force: Detective Jean Hunt used physical force against § 87(2)(b)**

**Allegation (E) Force: Sergeant Corey Martinez used physical force against § 87(2)(b)**

It is undisputed that Sgt. Martinez and Det. Hunt used a forceable takedown on § 87(2)(b)

§ 87(2)(b)

§ 87(2)(b) testified that upon opening the door, an officer knocked the beer can he was holding out his hand. Det. Hunt and Sgt. Martinez then each grabbed his biceps. § 87(2)(b) then walked forward on his tiptoes, and the officers placed his hands behind his back. While this was happening, § 87(2)(b) felt his legs being pushed from underneath him. He landed on the ground, and the front right side of his forehead hit the ground, sustaining a laceration. He felt officers on his back and legs but could not identify which parts of their bodies contacted him or what physical actions they were taking. He was then handcuffed [BR18].

Det. Hunt testified that after § 87(2)(b) was unresponsive to the officers' orders to open the door, Sgt. Martinez ordered him to remove the peep hole to the door. This caused a lot of noise, and § 87(2)(b) opened the door. Det. Hunt and PO Crezbeck identified themselves as ESU officers and told § 87(2)(b) to exit the apartment without anything in his hands. Sgt. Martinez cracked open the door, and § 87(2)(b) put his hands through, holding a beer can. PO Crezbeck knocked the beer can out of his hands and Det. Hunt grabbed his wrists. Sgt. Martinez opened the door all the way and Det. Hunt pulled § 87(2)(b) out of the apartment, which he was compliant with. Once he was removed from the apartment, Det. Hunt and Sgt. Martinez placed § 87(2)(b) against the opposite hallway wall to handcuff him. § 87(2)(b) began to flail his arms and pulled away from the officers. After 10 to 15 seconds of struggling, Det. Hunt and Sgt. Martinez took § 87(2)(b) to the ground to control him better. While conducting the takedown, § 87(2)(b)'s head hit the wall on the opposite side of the hallway, sustaining a laceration. § 87(2)(b) was handcuffed, and EMTs on scene treated his injury. Det. Hunt did not hold down § 87(2)(b)'s legs, nor did he see any officer do this [BR27]. Sgt. Martinez testimony was consistent with the incident [BR28].

BWC footage from PO Espinal captured the takedown. At 00:32 seconds, § 87(2)(b) is seen moving his arms as Det. Hunt and Sgt. Martinez attempt to handcuff him. The officers then take § 87(2)(b) to the floor; no other force is used [BR11]. The TRI reports prepared by Sgt. Martinez and Det. Hunt were consistent with their statements, noting that they used a forcible takedown and that § 87(2)(b) sustained a laceration during the incident [BR29 and BR30, respectively].

According to Patrol Guide Procedure 221-01, force may be used when it is reasonable to place a person in custody or to prevent escape from custody [BR31].

§ 87(2)(g)

**Allegation (F) Abuse of Authority: Officers took recordings of § 87(2)(b)**

While § 87(2)(b) alleged that officers recorded him while he was on the ground, BWC footage from the incident showed that this did not occur.

§ 87(2)(b) testified that after being taken to the ground, officers recorded him on the floor on their cellphones for approximately five minutes. § 87(2)(b) was unable to describe the officers doing so, as the blood from his laceration was in his eyes. The officers stopped recording once he was lifted from the ground [BR18].

Both Det. Hunt and Sgt. Martinez testified that they did not take cellphone footage of § 87(2)(b) nor did they see any other officer do so [BR27 and BR28, respectively].

BWC footage from, Sgt. Taveras, PO Chu, and PO Davila, which all captured the takedown and the remainder of the incident showed that at no point are the officers seen recording § 87(2)(b) while he is on the ground [BR05, BR07, BR09, and BR11, respectively].

§ 87(2)(g)

**Civilian and Officer CCRB Histories**

- This is the first CCRB complaint that § 87(2)(b) has been party to [BR32].
- Det. Hunt has been a member of service for 15 years and has been a subject in four CCRB cases and six allegations, none of which have been substantiated. § 87(2)(g)
- Sgt. Martinez has been a member of service for 15 years and has been a subject in three CCRB cases and seven allegations, none of which have been substantiated. § 87(2)(g)
- PO Pizarro has been a member of service for 13 years and has been a subject in four CCRB cases and eight allegations, none of which have been substantiated. § 87(2)(g)

**Mediation, Civil and Criminal Histories**

- This complaint was unsuitable for mediation, due to § 87(2)(b)'s arrest.
- As of January 28, 2020, § 87(2)(b) has not filed a Notice of Claim for this incident [BR33].
- [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]

[§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]  
[§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]

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Squad No.: \_\_\_\_\_

Investigator: \_\_\_\_\_  
Signature Print Title & Name Date

Squad Leader: \_\_\_\_\_  
Signature Print Title & Name Date

Reviewer: \_\_\_\_\_